

**ORDINANCE NO. 2016-14**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF  
AN AMENDED AND RESTATED SERVICE PAYMENT  
AGREEMENT WITH LEBANON MASON, LLC,  
RELATING TO TAX INCREMENT FINANCING, AND  
DECLARING AN EMERGENCY.**

**WHEREAS**, Section 5709.40, et seq., of the Ohio Revised Code (the “TIF Statutes”) authorizes municipal corporations to participate in a public improvement financing method known as tax increment financing; and

**WHEREAS**, in accordance with the TIF Statutes, the Council of the Village of South Lebanon (the “Village”) previously adopted Ordinance No. 2005-16 on December 1, 2005, pursuant to which the Village created Tax Incentive District Number 1 (the “TIF District”) and declared improvements to the parcels of land, and any subdivisions thereof, located within the TIF District (the “District Parcels”) to be a public purpose; and

**WHEREAS**, the Village and MMMilgrove Road, LLC, an Ohio limited liability company and predecessor in interest in the District Parcels (hereinafter, the “Predecessor”), previously entered into a Service Payment Agreement dated as of June 1, 2007 (the “Original Service Payment Agreement”), to provide generally for the issuance by the Village of one or more issues or series of revenue bonds or notes in anticipation of the issuance thereof (the “TIF Obligations”) that are payable solely from the tax increment revenues derived from the TIF District, including statutory service payments and minimum service payments payable by the owners from time to time of the District Parcels (collectively, the “Service Payments”), and are without recourse to Village’s general fund, to provide for the financing of the public improvements that will benefit the TIF District (the “Public Improvements”); and,

**WHEREAS**, Lebanon Mason, LLC, an Ohio limited liability company (“Developer”), now owns the District Parcels on which it plans to develop single family homes as well as commercial multi-family facilities and related improvements; and

**WHEREAS**, in order to account for the succession of the Company to the Predecessor’s interest in the District Parcels, and to more fully provide for the payment of the Service Payments by the owners from time to time of the District Parcels, the Village and Company, as successor to the Predecessor, have determined to amend and restate the Original Service Payment Agreement in its entirety; and

**NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF SOUTH LEBANON, STATE OF OHIO**, at least two-thirds of all members elected thereto concurring:

**SECTION 1.** The Amended and Restated Service Payment Agreement in the form on file with the Village Council is hereby approved, subject to such minor changes, insertions or omissions as may be approved without further action of the Council by the Village Solicitor approval as to form and execution by the Mayor and Village Fiscal Officer, such approval to be conclusively evidenced by his execution of said documents, in order to effectuate the purposes of this Ordinance; and the Mayor and Village Fiscal Officer are hereby authorized to execute and acknowledge the same for and on behalf of the Village. Said document is hereby ordered to be filed in the office of the Village Fiscal Officer, labeled Exhibit A, and said document is ordered to be recorded with this Ordinance in the official records of the Village.

**SECTION 2.** That this Council hereby finds and determines that all formal actions of Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council; and that all deliberations of this Council, and of any of its committees that resulted in such formal actions, were taken in meetings open to the public, in compliance with all legal requirements including, without implied limitation, Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That the Village Fiscal Officer is hereby directed to file a certified copy of this Ordinance with the County Auditor of the County of Warren, Ohio.

**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure and shall take effect immediately upon its adoption for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village and for the further reason that the Village must proceed with the construction of certain of the Public Improvements at the earliest possible date in order to provide Public Improvements necessary to permit the continued development of the District Parcels, thereby improving traffic flow, and potential eliminating traffic, stormwater and other hazards to the residents of the Village.

**SECTION 5.** That the Village Fiscal Officer is hereby directed to cause a summary of this Ordinance to be published.

**SECTION 6.** That this Ordinance shall take effect and be in full force when passed and approved according to law.

Adopted this 20th day of October, 2016.

Attest: Sharon Louallen  
Sharon Louallen, Fiscal Officer/Clerk

James D. Smith  
James D. Smith, Mayor

Rules Suspended: <u>10/30</u> /2016 (if applicable)	Effective Date – / /2016
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2016	Effective Date – / /2016
Second Reading – n/a	
Third Reading – n/a	
Vote - ___ Yeas ___ Nays	

Approved as to form:

PAUL R. REVELSON  
VILLAGE SODICITOR  
SOUTH LEBANON, OHIO

By: [Signature]  
Date: October 20, 2016

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(ABOVE LINE FOR RECORDER'S USE ONLY)

**AMENDED AND RESTATED  
SERVICE PAYMENT AGREEMENT**

THIS AMENDED AND RESTATED SERVICE PAYMENT AGREEMENT (the "Agreement"), made and entered into as of October 1, 2016, between the **VILLAGE OF SOUTH LEBANON, OHIO** (the "Village"), a village and political subdivision organized and existing under the Constitution and the laws of the State of Ohio (the "State"), and **LEBANON MASON, LLC**, an Ohio limited liability company, and its successors and assigns as herein permitted (the "Company").

**WITNESSETH:**

**WHEREAS**, the Council of the Village (the "Council"), on December 1, 2005, adopted an ordinance (the "TIF Ordinance"), creating a tax incentive district (the "TIF District", as further described in "Exhibit A" hereto), declaring improvements to the parcels of land, and any subdivisions thereof, located within the TIF District (the "District Parcels" as collectively described in "Exhibit A" hereto) to be a public purpose and designating as public improvements to the District Parcels certain roadway and appurtenant public improvements, described in "Exhibit B" hereto (the "Public Improvements"), that will benefit the TIF District; and,

**WHEREAS**, MMMilgrove Road, LLC, an Ohio limited liability company and predecessor in interest in the District Parcels to the Company (hereinafter, the "Predecessor"), and the Village previously entered into a Service Payment Agreement dated as of June 1, 2007 (the "Original Service Payment Agreement"), to provide generally for the issuance by the Village of TIF Obligations (defined *infra*) to provide for the financing of the Public Improvements that will benefit the District Parcels; and,

**WHEREAS**, by succession to the Predecessor, the Original Service Payment Agreement provides that Developer is responsible for the construction of the Public Improvements, all as more particularly described herein and in the Original Service Payment Agreement;

**WHEREAS**, the Village and the Predecessor previously entered into that certain Infrastructure Agreement dated as of June 1, 2007 (as amended by the First Amendment thereto

dated as of November 1, 2007, the “Original Infrastructure Agreement”) to provide for the development of the District Parcels and the purchase by the Village of the Public Improvements; and

**WHEREAS**, as a result of the succession of the Company to the Predecessor’s interest in the District Parcels, the Company owns the District Parcels and now plans to construct or cause the construction, on all or a portion of the District Parcels, of private improvements which are expected to include single-units condominium dwellings and other residential improvements, as well as possible mixed-use improvements (the “Improvements”); and

**WHEREAS**, in order to accommodate changes in market conditions and project parameters since the execution of the Original Infrastructure Agreement, and to more fully provide for the development of the Improvements and the construction and financing of the Public Improvements, the Village and Developer, as successor to the Predecessor, have entered into an Amended and Restated Infrastructure Agreement dated as of the date hereof (as amended from time to time, the “Infrastructure Agreement”; unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to such terms by the Infrastructure Agreement); and,

**WHEREAS**, in order to reflect the terms of the Infrastructure Agreement and further to account for the succession of the Company to the Predecessor’s interest in the District Parcels, and finally to more fully provide for the construction and financing of the Public Improvements, the Village and Company, as successor to the Predecessor, have determined to amend and restate the Original Service Agreement, in its entirety; and

**WHEREAS**, the TIF Ordinance provides, and it is contemplated by the parties to this Agreement, that one hundred percent (100%) of the increase in the assessed value of the District Parcels and the assessed value of the Improvements on the District Parcels (collectively, the “Exempted Property”) will be exempt from real property taxation for a period of up to 30 years, (the “TIF Exemption”); and

**WHEREAS**, pursuant to Section 5709.40, Ohio Revised Code (“O.R.C.”) and as provided in the TIF Ordinance, upon the creation of the TIF District, the Village is requiring the Company, as owner of a certain portion of the TIF District (including any portions of the TIF District acquired in the future), and any current or future owners of the parcels comprising the TIF District (such additional owner(s), which are transferees of the Company, are TIF District (hereinafter referred to collectively as the “Owners” and individually as an “Owner”), to pay semi-annually to the Village, via the Warren County Treasurer, an amount equal to the amount of real property taxes that would have been paid on the Exempted Property had the TIF Exemption not been granted pursuant to O.R.C. Section 5709.40 (such amount being hereinafter referred to as the “Statutory Service Payments”); and

**WHEREAS**, the Village proposes to issue TIF Obligations in order to pay the cost of constructing or acquiring the Public Improvements and that the debt service on the TIF

Obligations will be paid from the Service Payments (which include the Statutory Service Payments, as well as the Minimum Service Payments as hereinafter defined) to be paid pursuant to this Agreement; and

**WHEREAS**, the Village has entered into an Amended and Restated Tax Incentive Agreement (as amended from time to time, the "Tax Incentive Agreement") with the Kings Local School District (the "School District"), dated as of May 15, 2008, which Tax Incentive Agreement provides that the Village pay the School District certain compensation (the "TIF Compensation," as such term is defined in the Tax Incentive Agreement) for real property tax revenues lost caused from the granting of the TIF Exemption; and

**WHEREAS**, to provide additional assurance that there will be sufficient funds to pay the TIF Obligations and the TIF Compensation, the Village is requiring the owner of the portion of the District Parcels described in "Exhibit C – Minimum Service Payment Parcel" (such parcel being the "Minimum Service Payment Property") to make additional payments in the amount necessary to make the total amount of Service Payments (defined *infra*) payable with respect to the Minimum Service Payment Property equal to the amount that would have been paid in real property taxes on a valuation of \$18,000,000.00 within the taxing district in which such property is located (as more fully set forth in Section 3(c) herein); and,

**WHEREAS**, the Village and the Company hereto have agreed that the obligation to make Statutory Service Payments hereunder will be borne by the Owners based upon the value of the Exempted Property owned by each such Owner(s); and

**WHEREAS**, the parties intend that this Agreement, as amended and supplemented from time to time, shall constitute the agreement contemplated by O.R.C. Section 5709.40, et seq., and shall define the obligation of the Company (and any Owner(s) where appropriate) with respect to the Service Payments.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants hereinafter contained, the Village and the Company hereby amend and restate the Original Service Payment Agreement in its entirety and covenant, agree, and bind themselves as follows:

1. Development and Construction of Improvements. All Improvements constructed on the District Parcels shall be developed and constructed in accordance with applicable zoning requirements and building codes and as set forth in the Infrastructure Agreement.
2. Construction and Acquisition of Public Improvements. The Public Improvements, as further described in Exhibit B hereto, shall be constructed by the Company and acquired by the Village, all as set forth in the Infrastructure Agreement, including any requirements for surety and completion bonds as required therein. The Parties acknowledge that further Public Improvements, not described in Exhibit B, which benefit the TIF District may be needed in the future. The Parties agree to supplement this Agreement and the Infrastructure Agreement in a

mutually agreeable manner in order to finance such additional Public Improvements as may be needed for the TIF District.

3. Obligation to Make Service Payments.

(a) The parties hereby agree that the TIF Exemption is a one hundred percent (100%) exemption from real property taxation for the Exempted Property for a period commencing with the first tax year after the effective date of the TIF Ordinance in which the Exempted Property first appears on the tax list and duplicate of real and public utility property (the "Commencement Date") and ending on December 31, 2035 or the date that the costs of the Public Improvements are paid in full, whichever occurs first, all in accordance with O.R.C. Section 5709.40(C). The Owner(s) are required to make Statutory Service Payments in an amount equal to the real property taxes that would have been payable with respect to the Exempted Property had an exemption with respect to such Exempted Property not been applied for by the Owner(s) and allowed under O.R.C. Section 5709.40(C).

(b) Each Statutory Service Payment to be made under this Agreement by the Company will be made on a semi-annual basis in an amount equal to one-half (1/2) of the annual property tax amount that would have been payable had the TIF Exemption not been granted. The Statutory Service Payments shall be due and payable on each January 15 and July 15 or such other date as the Warren County Treasurer determines property taxes are due (such date being hereinafter referred to as a "Payment Date") through the expiration of the TIF Exemption. It is intended by the parties hereto that the Owner(s) other than the Company shall also make Statutory Service Payments in the same manner as described above. For the avoidance of doubt, it is understood that taxes in the State are paid in arrears and as such the final Payment Date will be July 15 of the calendar year immediately following the conclusion of the final tax year of the TIF Exemption (e.g. if the TIF Exemption terminates on December 31, 2035, the final Payment Date will be July 15, 2036).

In the event that, as of the date any Statutory Service Payment is due, the real property taxes on the Exempted Property cannot be or have not been finally determined for the real property tax year next preceding the due date, the amount of such taxes shall be determined from the Warren County Treasurer's tax duplicate if available, and, if said duplicate is not available, the same shall be estimated (even though such taxes may be subject to contest, later determination, or adjustment because of revaluation of the District Parcels and Improvements) for such year. In the event that the sum of Statutory Service Payments so calculated and paid with respect to the District Parcels in any year is subsequently determined to be different than the total amount of real property taxes that would have been paid with respect to the real property tax year next preceding such payments had an exemption not been applied for and allowed pursuant to the TIF Ordinance, the Company, and any current or future Owner(s) shall promptly pay the Village any deficiency with respect to its portion of the District Parcels, or the Village



shall promptly repay the Company, and any current or future Owner(s) any excess, as appropriate; provided, however, that nothing in this sentence shall be construed to require the Village to repay to any party any portion of the Minimum Service Payments (defined *infra*) required to be paid under this Agreement in any year. In the event that, after the execution of this Agreement, the Company acquires additional real property within the area constituting the District Parcels, the Company agrees to subject that real property to this Agreement and to record this Agreement with respect to such real property.

(c) Notwithstanding paragraph (b) of this Section 3, if and to the extent that on any Payment Date commencing on or after January 1, 2018 (i) Statutory Service Payments paid with respect to the Minimum Service Payment Property and applicable to such Payment Date, computed pursuant to paragraph (b) of this Section 3, are less than (ii) one-half (1/2) the product of (x) the total effective tax rate applicable to the Minimum Service Payment Property for such tax year, multiplied by (y) \$18,000,000.00, the Owner(s) of the Minimum Service Payment Property shall pay or cause to be paid to the Village, an amount sufficient to make up the difference between (i) and (ii) above (the "Minimum Service Payment"). The Minimum Service Payment must be paid even in the event that the Statutory Service Payments, as described in paragraph (b) of this Section 3, or any portion thereof, never come due or are not paid. If applicable, the Minimum Service Payment shall be due and payable ten (10) days after such Payment Date. Failure to construct the Improvements shall not affect the requirement of the Owner(s) of the Minimum Service Payment Property to make Minimum Service Payments pursuant to this paragraph (c). Such requirement to make Minimum Service Payments shall constitute a tax lien pursuant to O.R.C. 5709.91 on the Minimum Service Payment Property, subject to paragraph (e) of this Section 3. The Statutory Service Payments, together with the Minimum Service Payments, are hereinafter collectively referred to as the "Service Payments".

(d) The Village shall deposit the Service Payments it receives, less the payment of TIF Compensation then due to be paid to the School District, in the TIF Fund for transfer to the Trustee for the benefit of the holders of such TIF Obligations, to make the payments of principal and/or interest then due on the TIF Obligations (including any such payments that were previously due but remain unpaid). To the extent there are any excess Service Payments then on deposit in TIF Fund, and such excess Service Payments are not otherwise required to be used differently by the Trust Indenture, such Excess Service Payments shall be used (i) first, to reimburse the Village or the Trustee for any costs incurred by the Village or the Trustee in connection with the administration of the TIF Obligations, including the payment of the fees and expenses of the Trustee, the costs of defending any audit of the TIF Obligations by any public body, the costs of complying with the federal arbitrage rebate requirements, if applicable, and the costs of enforcing this Agreement, (ii) second, to reimburse the Company for any amount drawn upon, and the fee for providing, any letter of credit enhancing the creditworthiness of the TIF Obligations and paid to the provider of such letter of credit by the Company (evidenced

to the reasonable satisfaction of the Village), (iii) third, to reimburse the Company for any amounts it has advanced to make payments of principal and/or interest on TIF Obligations, (iv) fourth, to pay any TIF Compensation to the School District required to be paid by the Infrastructure Agreement from excess Service Payments, (v) fifth, as provided in the Infrastructure Agreement, and (vi) sixth, at the option of the Village, (A) to pay all amounts the Village has expended to pay the Village's economic development costs associated with this transaction; (B) to effect the defeasance, purchase or redemption of or any portion of the TIF Obligations; (C) to pay the cost of additional Public Improvements; (D) to pay all amounts the Village has expended for unforeseen costs associated with the Public Improvements (if any); or (E) to reimburse the Company for any payments made by the Company to the School District as compensation under Section 1(a)(iii) of the Tax Incentive Agreement. Notwithstanding anything in the foregoing to the contrary, to the extent that the provisions of the Trust Indenture and the provisions of this Agreement are in conflict, the provisions of the Trust Indenture shall control.

(e) Pursuant to O.R.C. 5709.40, et seq., as amended, the Statutory Service Payments shall be collected in the same manner as taxes otherwise collected by the Warren County Treasurer, to be paid by the Warren County Treasurer to the Village for deposit in the TIF Fund as set forth in paragraph (d) of this Section 3. The Service Payments shall constitute a lien on the respective District Parcels against which they are a lien pursuant to the terms of this Agreement and shall be enforceable as if they were a tax lien upon such District Parcels, pursuant to the Ohio Revised Code.

(f) Notwithstanding anything to the contrary set forth in this Agreement, neither the Company (and any current or future Owner(s)), the Village, nor their respective successors, assigns or transferees, including any current or future Owner(s), shall take any action that may endanger the status of or cause the revocation of the exemption approved and granted by the State of Ohio (as described below).

(g) Should the Company or any current or future Owner fail to make any payment required hereunder, it shall pay, in addition to the Service Payments it is required to pay hereunder, such amount as is required to reimburse the Village for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the Village to enforce the provisions of this Agreement against the Company and/or such Owner.

(h) It is acknowledged by the parties hereto that the parties hereto may agree in writing to modify Exhibit C hereto after the issuance of the TIF Obligations with the consent of 100% of the holders of the outstanding TIF Obligations. Without limiting the generality of the foregoing, the Company anticipates that the overall size of the parcel initially comprising the Minimum Service Payment Property may be reduced by approximately 2-5 acres.

4. Additional Obligations.

(a) The Company shall cause this Agreement to be recorded in the Warren County, Ohio real estate records (if necessary to secure the interests of the Village) with respect to the District Parcels and shall cause all instruments of conveyance of interests in the Improvements and the District Parcels to subsequent successors, assigns or transferees (except leases of space in the Improvements and mortgages), including any current or future Owner(s), to be subject to this Agreement.

In the event that the Company transfers to a third party any portion (less than all) of the District Parcels, then the Statutory Service Payments required hereinabove shall be allocated between the property conveyed (the "Transferred Portion") and the property retained by the Company (the "Retained Portion"). Said allocation shall be based upon the relative values of the Retained Portion and the Transferred Portion (including improvements thereon), as assessed from time to time on the records of the Warren County, Ohio Auditor, without reference to any exemption under O.R.C. Section 5709.40. Prior to the date that such separate assessment appears of record, the relative values of the Retained Portion and the Transferred Portion shall be determined by a qualified real estate appraiser selected by the Company and approved by the Village, or by another method mutually agreed to by the Company and the Village.

In the event that the Company transfers to a third party any portion (less than all) of the Minimum Service Payment Property, then the Minimum Service Payments required hereinabove shall be allocated between the property conveyed (the "MSP Transferred Portion") and the property retained by the Company (the "MSP Retained Portion"). Said allocation shall be based upon the relative values of the MSP Retained Portion and the MSP Transferred Portion (including improvements thereon), as assessed from time to time on the records of the Warren County, Ohio Auditor, without reference to any exemption under O.R.C. Section 5709.40. Prior to the date that such separate assessment appears of record, the relative values of the MSP Retained Portion and the MSP Transferred Portion shall be determined by a qualified real estate appraiser selected by the Company and approved by the Village, or by another method mutually agreed to by the Company and the Village. For the avoidance of doubt, it is understood that the Minimum Service Payment obligation, if any, is variable between years. The foregoing apportionment of liability for the Minimum Service Payment shall be made each tax year on a pro-rata basis based on the value of such property. For illustration purposes only, if the Company breaks the Minimum Service Payment Property into three parcels valued, using the foregoing method, at \$100, \$500, and \$250 (i.e. 11.76%, 58.82%, and 29.42% of the value of the Minimum Service Payment Property by parcel) and a Minimum Service Payment comes due in such tax year in the aggregate amount of \$1,000.00, the obligation to pay such payment shall be pro-rata applied to the foregoing parcels in the amount of \$117.60, \$588.20, and \$294.20, respectively.

(b) The obligation to perform and observe the agreements contained herein on the part of the Company and any current or future Owner(s) shall be binding and enforceable by the Village, the School District (as a third party beneficiary of this Agreement), the holders from time to time of any of the TIF Obligations and the Trustee, if any, against the Company and any current or future Owner(s) with respect to (and only to) its respective interest in its portion of the District Parcels and the Improvements, or any parts thereof or any interest therein, and the accompanying obligations hereunder.

(c) From and after the date that any person or entity transfers to any third party all or any portion of the District Parcels, then such third party (i.e., the new Owner) shall be solely responsible for payment of all Service Payments, including the Minimum Service Payments (if applicable), with respect to the portion of the District Parcels so transferred and the Village, the holders from time to time of any of the TIF Obligations hereinafter defined and any trustee for any of the holders of such TIF Obligations shall have no cause or right of action against the person or entity making the transfer with respect to the Service Payments, including the Minimum Service Payments, attributable to the portion of the District Parcels so transferred.

(d) The requirement to make Service Payments, including Minimum Service Payments, under this Agreement shall continue for the duration of the TIF Exemption.

5. Issuance of TIF Obligations.

(a) As used in this Agreement, the term "TIF Obligations" means one or more issues or series of revenue bonds (or notes in anticipation of the issuance thereof) issued by the Village without recourse to its general fund to finance the Public Improvements. The TIF Obligations shall be special, limited obligations secured solely by the Statutory Service Payments made by the Owners, any Minimum Service Payments, and such other security as the Company may optionally provide with the consent of the Village. At the request of the Company, subject to the requirements of the Tax Incentive Agreement and provided that the Company is not in default of its obligations under the Infrastructure Agreement, the Village will issue TIF Obligations in an amount not to exceed \$7,500,000 in the aggregate to (i) finance the Purchase Price for Costs of Work for the Public Improvements as provided in the Infrastructure Agreement (including interest on the TIF Obligations during the construction of the Public Improvements), (ii) if required to market the TIF Obligations, to fund a reasonably required reserve fund, and (iii) to pay costs of issuance of the TIF Obligations. The TIF Obligations shall be sold at the par value thereof, unless otherwise agreed to by the Village and the Company, and shall be structured such that, after the provision for costs of issuance as described in the preceding sentence, at least 95% of the par amount of the TIF Obligations is used to pay the costs described in (i), (ii) and (iii) above. Without limiting the generality of the foregoing, the TIF Obligations may be issued in one or more series and as draw-down obligations. Notwithstanding anything in the foregoing, the TIF Obligations will initially be purchased and held by the Company or an affiliate of the Company in which Industrial

Realty Group, LLC, a Nevada limited liability company, or the principals thereof, directly or indirectly, control or otherwise own a controlling membership interest, and may not be assigned or transferred except in accordance with the transfer restrictions initially agreed upon by the Village and the Company or such affiliate. Although it may subsequently agree to do so in its sole discretion, the Village will have no obligation to issue TIF Obligations to refund the initial TIF Obligations purchased by the Company or such affiliate.

6. Binding Nature of Obligations; Security for Payment. The obligation of the Owners to pay the Statutory Service Payments and the Minimum Service Payments (as applicable and if any), and the Owners and the Company to perform and observe the other agreements on their part contained herein, shall be absolute and unconditional, and (except for obligations personal to the Company) shall be covenants running with the land, and shall be binding and enforceable by the Village, the Warren County Treasurer, the School District (as a third party beneficiary of this Agreement), the holders from time to time of any of the TIF Obligations and any Trustee for any of the holders of the TIF Obligations, against the responsible parties and/or against the District Parcels, as applicable. It is the intention and agreement of the Company, as an Owner, that this Agreement and the covenants herein made shall be specifically enforceable by the Village by mandatory injunction or any other remedy at law or in equity. It is the further intention and agreement of the Company, as an Owner, that this Agreement shall constitute and be deemed to be a lien encumbering and running with the real property comprising the District Parcels to secure the obligations of the Company and any individual Owners to make Statutory Service Payments and the Minimum Service Payments (as applicable and if any) and, if applicable, to pay interest and penalties, which Service Payments are intended to have the same lien rights as real estate taxes and the same priority in accordance with O.R.C. Sections 323.11 and 5709.91. In furtherance of the foregoing, it is the intention of the Company, as an Owner, that the Village may, upon the occurrence of an event of default set forth in Section 16 hereof, and without limiting any other right or remedy otherwise available to the Village, take all such steps as may be legally available to it to foreclose upon such lien pursuant to the procedures and requirements of Ohio law relating to either delinquent real estate taxes or mortgage liens; provided, that nothing contained in this Agreement shall be deemed to authorize any acceleration of Service Payments due in future years.

At the Village's option and at its request, the Company hereby agrees to provide title evidence at no cost to the Village as is necessary to demonstrate to the Village's satisfaction that the covenants running with the land provided in this Section 6 are prior and superior to any other liens, encumbrances or other title exceptions, except for utility and access easements and the provisions of any reciprocal easement agreements and such title exceptions as are approved in writing by the Village.

Except to the extent otherwise provided in this Agreement, the obligations of the Company under this Agreement will not be terminated for any cause.

Failure to use or to occupy the Improvements shall not relieve the Company or any subsequent Owner of its obligations to make Service Payments as required hereunder. The obligations of any person or entity that is or becomes an Owner hereunder shall apply during such period, and only during such period, that such person or entity owns real property or Improvements which are a part of or which are located on such portion of the District Parcels.

7. Payment of Taxes; Contests.

(a) The Owners shall pay or cause to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against, or with respect to, the property of the Owners which is a part of the District Parcels or the Improvements or any personal property or fixtures of such Owners installed or brought therein or thereon (including, without limiting the generality of the foregoing, but by way of example, any taxes levied against such Owners with respect to the Improvements, receipts, income or profits from the operations of such Owners within the District Parcels and Improvements, which, if not paid, may become or be made a lien on such Owners portion of the District Parcels or Improvements) and all utility and other charges incurred by the Owners in the operation, maintenance, use, occupancy and upkeep of their respective portions of the District Parcels and the Improvements; provided, however, that nothing herein is intended to prevent the Owners, at their respective expense and in good faith, from contesting any such taxes, assessments or other charges, and in the event of any such contest, the Owners may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Village shall notify the Owner in question that, in the opinion of independent counsel selected by the Village, by non-payment of such items, the interest of such Owner in the Improvements and District Parcels shall be materially endangered or subject to loss or forfeiture, in which event such items shall be paid by the Owner in a timely manner, but without prejudice to the rights of the Owner to contest the same. No special tax shall be imposed upon the Owners due to a sale of its property to another party. Nothing in this paragraph shall be construed to relieve the Owners of the Minimum Service Payment Property of the duty to make Minimum Service Payments as required by this Agreement.

(b) Nothing in this Agreement shall require the Company, or any subsequent Owner of a portion of District Parcels, to pay or reimburse the payment by Village of any federal, state or local tax of any kind or character (whether based on gross or net income, gross receipts, or otherwise) which is imposed or levied on the Village.

8. Insurance Coverage and Proceeds.

(a) The Company shall provide and maintain, or cause to be provided and maintained insurance coverage on the Improvements owned by the Company and other improvements on its portion of District Parcels, or any replacements or substitutions therefor, against loss by fire and extended coverage perils, and against loss by such other

insurable hazards, all as reasonably determined by the mutual agreement of the Village and the Company (the "Casualty Insurance").

(b) The Village, or if directed by the Village in writing, the Trustee, if any, shall be named as a loss payee under the Casualty Insurance, as its interest may appear. From time to time, upon request by the Village or the Trustee, if applicable, the Company shall furnish such evidence or confirmation of the insurance required under this Section as the Village or the Trustee, if applicable, may reasonably request in writing. The proceeds of any insurance claim which is the result of damage to the portion of District Parcels or the Improvements owned by the Company shall, unless otherwise agreed to between the Company and its mortgagee, be used first, to pay the principal amount and all other sums owed to all mortgage lenders holding loans for the portion of the District Parcels and Improvements owned by the Company; second, for the purpose of restoring such portion of the District Parcels and Improvements to substantially the same condition as they existed prior to such damage or destruction; third, for the purpose of effecting defeasance, purchase or redemption of the Company's pro rata share of the TIF Obligations, based on the valuation of the land and the Improvements, and fourth, any excess over the amounts required for such purposes shall be the property of, and shall be paid to the Company.

9. Notices. All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the Village at 99 N. High Street, South Lebanon, Ohio 43650, Attn: Mayor; to the Company at 4020 Kinross Lakes Parkway, Suite 200, Richfield, Ohio 44286, Attn: Peter Goffstein; and to any other Owner at the tax mailing address for the property owned by such Owner in the District Parcels. The Village and the Company may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, designations, certification, requests or other communications shall be sent.

10. Representation and Warranties. The Company represents and warrants that it is a duly organized and existing Ohio limited liability company, is in good standing under the laws of the State of Ohio and is qualified to do business in the state.

11. Exemption Application. The Company shall have primary responsibility to prepare, execute and file, in a timely manner after the execution of this Agreement, such applications, documents and other information with the appropriate officials of the State, the Village or any other public body as may be required to effect the exemption from real property taxation described in O.R.C. Section 5709.40 with respect to its portion of the District Parcels. The Village shall cooperate in such preparation and filing by the Company, including, without limitation, executing such applications and documents as may be appropriate in assisting the Company in obtaining such exemption. The parties agree to use due diligence to cause the application for exemption from real property taxation to be filed with the appropriate officials. The Company shall continuously use due diligence and employ their best efforts to keep such

exemption in force, not permitting the same to lapse or be suspended or revoked for any reason within the Company's control.

12. Effective Date; Duration of Agreement. This Agreement shall become effective only after its execution and delivery by the parties. Unless sooner terminated pursuant to the terms hereof, this Agreement shall expire on the day following the date on which the final payment of principal of and premium, if any, and interest on the TIF Obligations or any refunding issue thereof is made, or deemed to be made to a trustee for the benefit of the holder or holders thereof.

13. Application of Payment. Service Payments, including the Minimum Service Payments, shall initially be made by the Owners [to the Warren County Treasurer – Do we want Minimum Service Payments to be paid to the Treasurer?] on or before the respective dates required in this Agreement. Upon distribution of such Service Payments to the Village, such Service Payments shall be deposited and applied in accordance with Section 3(d) hereof.

14. Reporting Requirements. During each year that the tax exemption granted pursuant to O.R.C. Section 5709.40 remains in effect, the Company and its respective successors, assigns and transferees agree, within forty-five (45) days following notice from the Village, to use commercially reasonable efforts to provide the information which is required to be provided in any reports that the Village files with the Ohio Development Services Agency in accordance with O.R.C. Section 5709.40.

15. Defaults and Remedies. The following shall be events of default under this Agreement:

(a) the failure of the Company, its successors, assigns or transferees, including any current or future Owner(s), to pay, when due, any Statutory Service Payment for its portion of the District Parcels, or any installment thereof, including any applicable late payment charges;

(b) the failure of the Company, its successors, assigns or transferees, including any current or future Owner(s), to pay, when due, any Minimum Service Payment with respect to the Minimum Service Payment Property, or any installment thereof, including any applicable late payment charges; which failure shall continue for more than ten (10) days following written notice thereof by the Village;

(c) the failure of the Company, its successors, assigns or transferees to provide the information required hereinabove; which failure shall continue for more than thirty (30) days following written notice thereof by the Village; provided that such thirty (30) day period may be extended for a reasonable period of time necessary to cure such default provided the Company is diligently pursuing such cure; and



(d) the failure of the Company, its successors, assigns and transferees to perform or observe any other covenant made by it in this Agreement, which failure shall continue for more than thirty (30) days following written notice thereof by the Village.

Upon the occurrence and continuation of any of the foregoing events of default, the Village shall be entitled to exercise any and all remedies available to it to compel performance by the defaulting party, or to recover damages for non-performance. Waiver by the Village of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement.

16. Counterparts; Captions. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

17. Severability. In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.


All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.


18. Additional Documents; Amendment. The Village, the Company, and their respective successors, assigns and transferees, agree to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement. To the extent permitted by this Agreement, and in compliance with all laws and ordinances controlling this Agreement, the Village, the Company, and their respective successors, assigns and transferees, agree that any amendment to this Agreement must be in writing and signed by all parties.

[signature page follows]

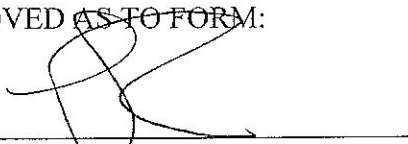
IN WITNESS WHEREOF, the Village and the Company have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date hereinbefore written.

VILLAGE OF SOUTH LEBANON, OHIO

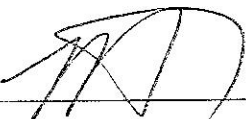
By:   
Mayor

By:   
Fiscal Officer

APPROVED AS TO FORM:

By:   
Solicitor, Village of South Lebanon, Ohio

LEBANON MASON, LLC

By: 

Printed: Peter Guffstein

Title: Authorized Agent

## VILLAGE FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the Village of South Lebanon, Ohio, hereby certifies that the moneys required to meet the obligations, if any, of the Village during the year 2016 under the foregoing Amended and Restated Service Payment Agreement have been lawfully appropriated by the Council of the Village of South Lebanon, Ohio for such purpose and are in the treasury of the Village or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



Fiscal Officer  
Village of South Lebanon, Ohio

October 27, 2016

STATE OF OHIO            )  
  ) ss:  
COUNTY OF WARREN    )

On this 27 day of October, 2016, personally appeared before me, a Notary Public in and for the State of Ohio, the Village of South Lebanon, Ohio, by James D. Smith and Sharon Conliffe, known and known to be the Mayor and Fiscal Officer of said Village and duly authorized in the premises, who acknowledged the signing and sealing of the said Amended and Restated Service Payment Agreement for themselves and on behalf of said Village, to be their voluntary acts and deeds, and the voluntary act and deed of said Village.

Brianna M. Yarbrough  
Notary Public

My commission expires: 9-15-2021

STATE OF OHIO            )  
  ) ss:  
COUNTY OF Warren    )

**Brianna M. Yarbrough**  
**Notary Public, State of Ohio**  
**My Commission Expires 9-15-2021**  
**Recorded in Warren County**

On this 21<sup>st</sup> day of October, 2016, personally appeared before me, a Notary Public in and for the State of Ohio, by Peter Gottstein, Authorized Agent of Lebanon Mason, LLC, who acknowledged the signing of the said Amended and Restated Service Payment Agreement for himself/herself and on behalf of Lebanon Mason, LLC, to be his/her voluntary act and deed, and the voluntary act and deed of Lebanon Mason, LLC.

Brianna M. Yarbrough  
Notary Public

My commission expires: 09-15-2021

This instrument prepared by:

P. Andrew Spoor, Esq.  
Keating Muething & Klekamp PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, OH 45202

**Brianna M. Yarbrough**  
**Notary Public, State of Ohio**  
**My Commission Expires 9-15-2021**  
**Recorded in Warren County**

## EXHIBIT A

### LEGAL DESCRIPTION OF THE DISTRICT PARCELS

#### Tract I. 42.789 Ac. Sidwell No. 12-01-151-002

Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio, and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 63.54 feet to the real point of beginning for this description; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 133.46 feet to an iron pin found; thence continuing along said centerline of said M Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence along a new division line the following seven (7) courses: (1) leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set; said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; (2) with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; (3) with a curve to the left an arc distance of 991.55 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 82 deg. 20' 26" East, and a chord distance of 984.90 feet; (4) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet; (5) South 64 deg. 32' 14" East a distance of 176.15 feet to an iron pin set; (6) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (7) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48 along a curve to the right an arc distance of 652.11 feet to a point, said curve having a radius of 2183.48 feet, a chord bearing North 11 deg. 28' 40" West and a chord distance of 649.69 feet; thence leaving said west line of said State Route 48, South 67 deg. 02' 20" West a distance of 13.38 feet to a point; thence South 89 deg. 07' 20" West a distance of 542.52 feet to an iron pin set; thence North 32 deg. 52' 40" West a distance of 330.64 feet to the real point of beginning for this description, passing at 280.60 feet to an iron pin found.

Containing in all 42.789 acres (25.229 acres in Section 1 & 17 .560 acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J, Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

**Tract 2. 22.971 Ac. 12-01-151-004**

Situated in Section 1, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road along a new division line, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence continuing along a new division line, with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence continuing along a new division line, with a curve to the left an arc distance of 759.38 feet to an iron pin set at the real point of beginning for this description: said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence continuing along a new division line the following five (5) courses: (1) continuing along said curve to the left an arc distance of 232.16 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing North 73 deg. 32' 01" East and a chord distance of 232.08 feet: (2) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet: (3) South 64 deg. 32' 14" East a distance of 176 .15 feet to an iron pin set: (4) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (5) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48, South 06 deg. 56' 31" West a distance of 168.22 feet to an iron pin found; thence continuing along said west line of said State Route 48, South 48 deg. 45' 05" East a distance of 92.00 feet to an iron pin found; thence leaving said west line of said State Route 48, South 06 deg. 13' 50" East a distance of 50.00 feet to an iron pin found; thence South 09 deg. 13' 10" West a distance of 50.00 feet to an iron pin found; thence South 18 deg. 15' 10" West a distance of 50.00 feet to an iron pin found: thence South 29 deg. 14' 30" West a distance of 65.00

feet to a point; thence South 48 deg. 28' 30" West a distance of 164.00 feet to a point; thence South 35 deg. 48' 30" West a distance of 78.00 feet to a point; thence South 51 deg. 29' 30" West a distance of 214.00 feet to a point; thence South 59 deg. 38' 30" West a distance of 399.08 feet to a point; thence South 64 deg. 31' 30" West a distance of 258.53 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 24.09 feet to an iron pin set; thence along a new division line the following four (4) courses: (1) North 17 deg. 57' 19" West a distance of 445.19 feet to an iron pin set; (2) North 28 deg. 4' 06" East a distance of 97.00 feet to an iron pin set; (3) North 39 deg. 26' 09" West a distance of 252.71 feet to an iron pin set; (4) North 01 deg. 55' 24" West a distance of 437.24 feet to the real point of beginning for this description.

Containing in all 22.971 Acres, more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

Less and Except:

Situated in Section 1, Town 4, Range 3, Union Township, the Village of South Lebanon, Warren County, Ohio and being more particularly described as follows:

Commencing at an existing spike at the centerline intersection of Turtlecreek Road and Mason-Morrow-Millgrove Road; thence along the centerline of said Mason-Morrow-Millgrove Road South 71 deg. 28' 59" West, 63.54 feet to the northeast corner of Tract I as conveyed to MMMilgrove Road LLC, as recorded in O.R. 3897, Page 406 of the Warren County Recorder's Office; thence leaving the centerline of Mason-Morrow-Millgrove Road, along the east line of Tract I of said MMMilgrove Road LLC, Tract I, the following three (3) courses:

1. South 32 deg. 53' 01" East, 330.64 feet;
2. North 89 deg. 06' 59" East, 542.52 feet;
3. North 67 deg. 01' 59" East, 13.38 feet to a point in the west right of way of State Route 48;

Thence along the west right of way of said State Route 48, on a curve deflecting to the left having a radius of 2183.48 feet, an arc length of 652.11, having a central angle of 17 deg. 06' 42", chord of said arc bears. South 11 deg. 29' 01" East, 649.69 feet to the northeast corner of Tract 2 of said MMMilgrove Road LLC; thence along the east line of said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 06 deg. 56' 10" West, 129.49 feet to a set iron pin and the point of beginning; thence continuing along said

MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 6 deg. 56' 10" West, 38.73 feet to an existing concrete monument and South 48 deg. 45' 26" East, 92.00 feet to the northeast corner of a tract conveyed to the State of Ohio Department of Natural Resources as recorded in O.R. 52, Page 842 of the Warren County Recorder's Office referenced by an existing concrete monument at South 3.25 feet and East 3.85 feet; thence along said State of Ohio Department of Natural Resources, the following five (5) courses:

1. South 06 deg. 14' 11" East, 50.00 feet to a point being referenced by an existing concrete monument, South 3.20 feet and East 3.78 feet;
2. South 09 deg. 12' 49" west, 50.00 feet to point being referenced by an existing concrete monument at South 3.27 and East 3.82 feet;
3. South 18 deg. 14' 49" West, 50.00 feet to a point being referenced by an existing concrete monument at South 3.31 and East 3.64 feet;
4. South 29 deg. 14' 09" West, 65.00 feet to a point being referenced by an existing concrete monument at 3.94 feet and 3.14 feet;
5. South 48 deg. 28' 09" West 49.11 feet to a set iron pin;

Thence along new division lines through the lands of the grantor, the following four (4) courses:

1. South 86 deg. 38' 36" West, 199.69 feet to a set iron pin;
2. North 03 deg. 21' 24" West, 250.24 feet to a set MAG nail;
3. North 33 deg. 23' 23" East 103.35 feet to a set iron pin;
4. North 86 deg. 38' 36" East, 179.67 feet to the point of beginning.

Containing 2.0000 acres. Subject to legal highways and easements of record.

The above described parcel being part of those lands conveyed to MMMilgrove Road LLC, as recorded at the Warren County Recorder's Office and is further identified as Auditor's Parcel No. 12011510030.

Monuments referred to set iron pins are 5/8 inch diameter x 30-inch long iron bars with a cap marked "G.J. BERDING P.S. 6880".

The bearings are based on State Plane Coordinate Systems, Ohio South Zone, NAD 83.

Based on a plat of survey prepared by G.J. Berding Surveying, Inc., on October 29, 2009. This description was prepared and reviewed on October 29, 2009. Gerard J. Berding, Registered Surveyor Number 6880.

Leaving a remainder of 20.971 acres for Tract 2, more or less.

**Tract 3. 47.972 Ac. 12-01-151-006**



Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road; South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to the real point of beginning for this description, said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence with a curve to the left an arc distance of 759.38 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence South 01 deg. 55' 24" East a distance of 437.24 feet to an iron pin set; thence South 39 deg. 26' 09" East a distance of 252.71 feet to an iron pin set; thence South 28 deg. 45' 06" West a distance of 97.00 feet to an iron pin set; thence South 17 deg. 57' 19" East a distance of 445.19 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 140.76 feet to an iron pin set; thence North 89 deg. 02' 40" West a distance of 170.25 feet to an iron pin set; thence South 05 deg. 49' 00" West a distance of 87.60 feet to an iron pin set; thence North 84 deg. 51' 00" West a distance of 444.00 feet to an iron pin set; thence North 83 deg. 46' 00" West a distance of 534.12 feet to an iron pin set; thence South 79 deg. 45' 00" West a distance of 612.46 feet to an iron pin set; thence North 06 deg. 18' 40" East a distance of 2158.88 feet to the real point of beginning for this description.

Containing in all 47.972 Acres (17.315 acres in Section 1 & 30.657 Acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6649, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

## EXHIBIT B

### THE "PUBLIC IMPROVEMENTS\*"

Public improvements which benefit the Site, including, but not limited to, the following:

1. Site Work
2. Demolition
3. Water and Sewer
4. Electric
5. Roadway
6. Offsite Utility Improvements
7. ROW Improvements
8. ROW Acquisition

The Initial Public Improvements are more fully depicted within the boundaries of Phase 1a in Exhibit J attached to the Infrastructure Agreement (with the exception of tapping into the main water/sewer line which falls further down Mason-Morrow-Milgrove Road, as depicted in such Exhibit J).

This Exhibit B shall be deemed supplemented from time to time as Exhibit B to the Infrastructure Agreement is supplemented, in accordance with its terms.

EXHIBIT C

LEGAL DESCRIPTION OF MINIMUM SERVICE PAYMENT PROPERTY

Tract 2. 22.971 Ac. 12-01-151-004

Situated in Section 1, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road along a new division line, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence continuing along a new division line, with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence continuing along a new division line, with a curve to the left an arc distance of 759.38 feet to an iron pin set at the real point of beginning for this description: said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence continuing along a new division line the following five (5) courses: (1) continuing along said curve to the left an arc distance of 232.16 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing North 73 deg. 32' 01" East and a chord distance of 232.08 feet: (2) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet: (3) South 64 deg. 32' 14" East a distance of 176 .15 feet to an iron pin set: (4) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (5) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48, South 06 deg. 56' 31" West a distance of 168.22 feet to an iron pin found; thence continuing along said west line of said State Route 48, South 48 deg. 45' 05" East a distance of 92.00 feet to an iron pin found; thence leaving said west line of said State Route 48, South 06 deg. 13' 50" East a distance of 50.00 feet to an iron pin found; thence South 09 deg. 13' 10" West a distance of 50.00 feet to an iron pin found; thence South 18 deg. 15' 10" West a distance of 50.00 feet to an iron pin found: thence South 29 deg. 14' 30" West a distance of 65.00

feet to a point: thence South 48 deg. 28' 30" West a distance of 164.00 feet to a point; thence South 35 deg. 48' 30" West a distance of 78.00 feet to a point; thence South 51 deg. 29' 30" West a distance of 214.00 feet to a point: thence South 59 deg. 38' 30" West a distance of 399.08 feet to a point; thence South 64 deg. 31' 30" West a distance of 258.53 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 24.09 feet to an iron pin set; thence along a new division line the following four (4) courses: (1) North 17 deg. 57' 19" West a distance of 445.19 feet to an iron pin set; (2) North 28 deg. 4" 06" East a distance of 97.00 feet to an iron pin set; (3) North 39 deg. 26' 09" West a distance of 252.71 feet to an iron pin set; (4) North 01 deg. 55' 24" West a distance of 437.24 feet to the real point of beginning for this description.

Containing in all 22.971 Acres, more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

Less and Except:

Situated in Section 1, Town 4, Range 3, Union Township, the Village of South Lebanon, Warren County, Ohio and being more particularly described as follows:

Commencing at an existing spike at the centerline intersection of Turtlecreek Road and Mason-Morrow-Millgrove Road; thence along the centerline of said Mason-Morrow-Millgrove Road South 71 deg. 28' 59" West, 63.54 feet to the northeast corner of Tract I as conveyed to MMMilgrove Road LLC, as recorded in O.R. 3897, Page 406 of the Warren County Recorder's Office; thence leaving the centerline of Mason-Morrow-Millgrove Road, along the east line of Tract I of said MMMilgrove Road LLC, Tract I, the following three (3) courses:

1. South 32 deg. 53' 01" East, 330.64 feet;
2. North 89 deg. 06' 59" East, 542.52 feet;
3. North 67 deg. 01' 59" East, 13.38 feet to a point in the west right of way of State Route 48;

Thence along the west right of way of said State Route 48, on a curve deflecting to the left having a radius of 2183.48 feet, an arc length of 652.11, having a central angle of 17 deg. 06' 42", chord of said arc bears. South 11 deg. 29' 01" East, 649.69 feet to the northeast corner of Tract 2 of said MMMilgrove Road LLC; thence along the east line of said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 06 deg. 56' 10" West, 129.49 feet to a set iron pin and the point of beginning; thence continuing along said

MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 6 deg. 56' 10" West, 38.73 feet to an existing concrete monument and South 48 deg. 45' 26" East, 92.00 feet to the northeast corner of a tract conveyed to the State of Ohio Department of Natural Resources as recorded in O.R. 52, Page 842 of the Warren County Recorder's Office referenced by an existing concrete monument at South 3.25 feet and East 3.85 feet; thence along said State of Ohio Department of Natural Resources, the following five (5) courses:

1. South 06 deg. 14' 11" East, 50.00 feet to a point being referenced by an existing concrete monument, South 3.20 feet and East 3.78 feet;
2. South 09 deg. 12' 49" west, 50.00 feet to point being referenced by an existing concrete monument at South 3.27 and East 3.82 feet;
3. South 18 deg. 14' 49" West, 50.00 feet to a point being referenced by an existing concrete monument at South 3.31 and East 3.64 feet;
4. South 29 deg. 14' 09" West, 65.00 feet to a point being referenced by an existing concrete monument at 3.94 feet and 3.14 feet;
5. South 48 deg. 28' 09" West 49.11 feet to a set iron pin;

Thence along new division lines through the lands of the grantor, the following four (4) courses:

1. South 86 deg. 38' 36" West, 199.69 feet to a set iron pin;
2. North 03 deg. 21' 24" West, 250.24 feet to a set MAG nail;
3. North 33 deg. 23' 23" East 103.35 feet to a set iron pin;
4. North 86 deg. 38' 36" East, 179.67 feet to the point of beginning.

Containing 2.0000 acres. Subject to legal highways and easements of record.

The above described parcel being part of those lands conveyed to MMMilgrove Road LLC, as recorded at the Warren County Recorder's Office and is further identified as Auditor's Parcel No. 12011510030.

Monuments referred to set iron pins are 5/8 inch diameter x 30-inch long iron bars with a cap marked "G.J. BERDING P.S. 6880".

The bearings are based on State Plane Coordinate Systems, Ohio South Zone, NAD 83.

Based on a plat of survey prepared by G.J. Berding Surveying, Inc., on October 29, 2009. This description was prepared and reviewed on October 29, 2009. Gerard J. Berding, Registered Surveyor Number 6880.

Leaving a remainder of 20.971 acres for Tract 2, more or less.